

Appl. No. 10/774,616
Brief on Appeal dated September 19, 2005
Response to Final Office Action of October 20, 2004
Docket No.: 81328.0003



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re the application of:

Appln. No.: 10/774,616 Group Art Unit: 3632
Filed: February 10, 2004 Examiner: Tan LE
Applicant: Howard Jason HARRISON, et al. Confirmation No.: 3389
For: Eyeglass Holder

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

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Alexandria, VA 22313-1450

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Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellants submit the following:

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	EVIDENCE APPENDIX:	N/A
	RELATED PROCEEDINGS APPENDIX	N/A

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I. REAL PARTY IN INTEREST

This application has not been assigned and is owned by the named inventors.

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II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

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III. STATUS OF CLAIMS

Claims 3-5, 9-11 and 13-17 were canceled, and each of the pending claims 1, 2, 6-8 and 12 stands rejected under 35 U.S.C. § 102(b) and are being appealed.

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IV. STATUS OF AMENDMENTS

The Reply and Amendment filed in response to the Final Office Action on December 20, 2004, has been entered.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention relates to a figure or doll figure wherein the arms or appendages are sized to and in a horizontal position to accommodate a pair of a persons or childs eyeglasses.

Independent claim 1 is described, in part, in the specification at page 2, paragraph 0007, through page 3, end of paragraph 0008 and Figures 1, 2, 5, 6, 7, and 8.

Independent claim 7 is described, in part, in the specification at page 2, paragraph 0007, through page 3, end of paragraph 0008, and Figures 1, 2, 5, 6, 7, and 8.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The sole remaining rejection to all the pending claims 1-2, 6, 7-8 and 12 is under 35 U.S.C. 102(b), as being anticipated by U.S. Patent No. 6,309,016 (hereinafter “Aliosi”). Aliosi discusses furniture pieces, including tables, shelf units, and chairs (*see* Abstract).

VII. ARGUMENT

Argument Regarding Rejection Under 35 U.S.C. § 102(b)

Appellants contend that it is unreasonable to interpret the content of Aliosi in the way the Examiner has to allegedly anticipate the pending claims for two reasons. First, nothing within the four corners of Aliosi even suggests a figure that can be arranged or sized to accommodate a pair of eyeglasses so that the eyeglasses contact each of the arms or appendages as recited in claims 1 and 7, the two independent claims. Second, the claims cannot reasonably be interpreted to encompass something as large as the furniture or tables referred to in Aliosi.

The rejection at issue concerns anticipation under 35 U.S.C. § 102(b), where “to anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim.” *Brown v. 3M*, 60 U.S.P.Q.2d 1375 (Fed. Cir. 2001); and *see In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). The description in Aliosi clearly and unambiguously refers to a piece of furniture (*see* col. 1, lines 43-48, and Figures 1-8). The Figures clearly show large furniture pieces that hold lamps and books (Fig. 2), potted plants (Fig. 4), and diaper bags (Fig. 6). The embodiment of Fig. 8 of Aliosi depicts the horizontal arms (835a and 835b) where element (820) is the seat of a chair as stated at col. 4, lines 50-55. It is unreasonable for anyone to conclude that such an arrangement of the arm elements can accommodate a pair of eyeglasses so that the eyeglasses contact each arm.

The Examiner asserts that the furniture of Aliosi forms a holding device “capable of receiving the pair of eyeglasses.” *See* Final Office Action at page 3. However, whether or not a shelf is held between the arms of the Aliosi furniture is not material to the arrangement of the arms themselves and what the arms are capable of contacting in the arrangements disclosed in the Aliosi document. Besides the shelf, as shown in Fig. 2 of Aliosi, there is no reasonable reading of Aliosi

allowing the arms or appendages to both contact something as small as eyeglasses. Respectfully, Appellants assert that the Examiner has failed to recognize the difference in the arrangement of the arms or appendages apparent in Aliosi as compared the claimed invention. The arms or appendages in the furniture of Aliosi cannot be arranged to accommodate a pair of a persons or childs eyeglasses where each arm contacts the eyeglasses.

During examination, the Patent Office interprets the claimed invention in the broadest reasonable terms. In this case, the terms of the claims themselves indicate that the figures and doll figures are sized in an appropriate manner to accommodate eyeglasses. These claim terms cannot be disregarded. If there is any doubt as to the meaning of these claim terms, the embodiment of Fig. 1 shows the arrangement along with a pair of eyeglasses they are intended to hold. Appellants are unsure if the Examiner's position is that the claimed invention can be of any size or any arrangement. However, the description and figures in the specification refer to particular sizes of eyeglasses at paragraph [0008]. There is nothing in this description that would lead one to reasonably conclude that the invention encompasses a figure the size of a chair as in the furniture of Aliosi's Fig. 8, for example. Accordingly, Appellants respectfully submit that the pending claims have not been reasonably interpreted.

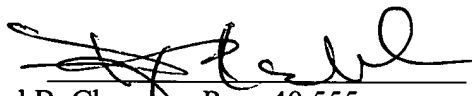
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Accordingly, the Appellants respectfully request that the rejection of all the pending claims be reversed.

The Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 50-1129, including any extension of time fee and/or fee for filing an Appeal Brief necessary to enter this paper.

Respectfully submitted,
WILEY REIN & FIELDING LLP

Date: September 19, 2005

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CLAIMS APPENDIX

CLAIMS 1-2, 6-8 and 12 ON APPEAL:

1. A doll figure comprising:

(a) arms or appendages attached to a body or torso, wherein the arms or appendages form a horizontal position relative to the ground, and wherein the arms or appendages together with the body or torso are sized to accommodate a pair of a persons or childs eyeglasses so that the eyeglasses contact each of the arms or appendages and the arms or appendages together with the body or torso form a holding device for receiving the pair of eyeglasses; and

(b) a support structure for holding the doll figure in an upright position, wherein the doll figure is capable of securely holding a pair of eyeglasses.

2. The doll figure of claim 1, wherein the doll figure is fashioned to display a human form.

3-5 Canceled

6. The doll figure of claim 2, wherein the body of the doll figure comprises an element for contacting the bridge part of the eyeglasses.

7. A figure comprising:

(a) moveable arms or appendages, wherein the arms or appendages can be temporarily fixed in a horizontal position;

(b) a holding device for receiving a pair of a persons or a childs eyeglasses, wherein the eyeglasses contact the device at least at the part of the eyeglass frame around or near the lens, and wherein the moveable arms or appendages together with a body or torso of the figure are sized to accommodate a pair of eyeglasses so that the eyeglasses contact each of the arms or appendages;

(c) a support structure for holding the figure in an upright position.

8. The figure of claim 7, wherein the figure is fashioned to display a human form.

9-11 Canceled

12. The figure of claim 7, wherein the body of the figure comprises an element for contacting the bridge part of the eyeglasses.

13-17 Canceled